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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAPITOL RECORDS, INC., CAROLINE RECORDS, :
INC., EMI CHRISTIAN MUSIC GROUP INC., :
PRIORITY RECORDS LLC, VIRGIN RECORDS :
AMERICA, INC., BEECHWOOD MUSIC CORP., :
COLGEMS-EMI MUSIC INC., EMI APRIL MUSIC :
INC., EMI BLACKWOOD MUSIC, EMI FULL KEEL :
MUSIC, EMI GOLDEN TORCH MUSIC CORP., EMI :
LONGITUDE MUSIC, EMI VIRGIN MUSIC, INC., :
EMI VIRGIN SONGS, INC., EMI AL GALLICO :
MUSIC CORP., EMI ALGEE MUSIC CORP., EMI :
FEIST CATALOG, INC., EMI GOLD HORIZON : 07 Civ. 9931 (WHP)
CORP., EMI GROVE PARK MUSIC, INC., EMI : ECF Case
HASTINGS CATALOG, INC., EMI MILLS MUSIC, :
INC., EMI MILLER CATALOG, INC., EMI :
ROBBINS CATALOG, INC., EMI U CATALOG, :
INC., EMI UNART CATALOG, INC., JOBETE :
MUSIC CO., INC., SCREEN GREMS-EMI MUSIC, :
INC., STONE AGATE MUSIC, and STONE :
DIAMOND MUSIC, :

Plaintiffs, :
v. :
MP3TUNES, LLC, and MICHAEL ROBERTSON, :
:
Defendants. :

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**MOTION OF NONPARTIES SOUNDEXCHANGE, ASCAP, BMI, SESAC, AND NMPA
FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS**

TO ALL PARTIES AND COUNSEL OF RECORD:

Nonparties SoundExchange, Inc. (“SoundExchange”), the American Society of Composers, Authors and Publishers (“ASCAP”), Broadcast Music, Inc. (“BMI”), SESAC, Inc. (“SESAC”), and the National Music Publishers Association (“NMPA”) (collectively, “Amici”) hereby move for leave to file the accompanying *amicus curiae* brief in the above-captioned case in support of Plaintiffs’ motion for summary judgment, filed on October 29, 2010 (Dkt. No. 186), and Plaintiffs’ opposition to Defendants’ motion for summary judgment, filed on November 24, 2010 (Dkt. No. 209). Plaintiffs have consented to the filing of this brief. Counsel for Amici have conferred with counsel for Defendants, and Defendants have not consented to the filing of this brief.

As set forth more fully in the accompanying brief, filed concurrently, Amici are performing rights organizations that collect royalties from the exploitation of copyrighted works and distribute those royalties to their creators and rights owners. Amici collect and distribute to their members significant royalties from legitimate services, such as iTunes and Pandora Internet radio. Like these legitimate services, Defendant MP3tunes makes available and digitally transmits huge numbers of sound recordings of copyrighted music to the public at large. But unlike these legitimate services, MP3tunes doesn’t pay a nickel for any of them. This is copyright infringement, pure and simple. MP3tunes seeks to avoid this reality by offering a cramped and twisted interpretation of the public performance right, and a purported “volitional” requirement, that together would effectively eviscerate the public performance right online. Accordingly, Amici respectfully submit their unique views on the importance, history, scope, and proper understanding of the public performance right and related protections for the creative output of their member songwriters, composers, lyricists, musicians, and copyright owners.

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Dated: New York, New York
December 17, 2010

LOEB & LOEB LLP

By: /s/ Barry I. Slotnick

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